

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2992 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.
2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

GUJ. DAIRY DEVELOPMENT CORPORATION LTD.

Versus

ABAD DAIRY KARMACHARI MANDAL

Appearance:

MR K.M. PATEL, Advocate, for Petitioner.
MR K>.R. KOSHTI, Advocate for respondent.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 27/06/96

ORAL JUDGEMENT

This Special Civil Application is directed against the award dated 21-11-1986 passed by the Industrial Tribunal, Gujarat, Ahmedabad, in Ref. (IT) No.248/82. There was a dispute between Abad Dairy Ahmedabad and The Workmen employed under Abad Dairy Karmachari Mandal, Ahmedabad to adjudicate the demand

with regard to pay-scale for the posts of Fitters, Welders and Turners etc. The employees of Abad Dairy, Ahmedabad are claiming pay-scale of Rs.330-560 instead of pay-scale of Rs.260-430 claiming parity with the pay-scale which was available to the identical employees in Ahmedabad Municipal Transport Service(AMTS for short) with effect from 1-1-1978.

2. The Industrial Tribunal framed issues as under:-

- (i) Whether the Senior Fitter and Plant Attendant is entitled to get the grade of Rs.330-560?
- (ii) Whether the Welder and Turner of the Engineering Department are entitled to get the grade of Rs.330-560 or not?
- (iii) Whether Petrol Fitter is entitled to the Grade of Rs.330-560 or not ?
- (iv) If the answers to issues Nos.1, 2 and 3 are in affirmative then from which date they are entitled to get the benefit of the said grade?
- (v) If the answers to the issues No.1, 2 and 3 are in the affirmative then from which date the concerned employees are entitled to get the difference of the amount of in the new pay scale?
- (vi) What order is required is to be passed in this reference ?

The Industrial Tribunal held Issues No.1 to 3 in favour of the employees. Regarding Issue No.4 it found that the date of entitlement should be 1-1-1978. While deciding Issue No.5 it was held that the employees were entitled to get the amount of difference from 1-1-1982 and accordingly final order was passed directing the petitioner Dairy to make applicable new pay-scale of Rs.330-560 from 1-1-1978 to the concerned employees and after fixing their pay in the new pay-scale difference will be paid from 1-1-1982. The award dated 21-11-1986 is challenged in this petition on behalf of the Gujarat Dairy Development Corporation on the ground that the Industrial Tribunal has not taken into consideration the fact that in AMTS there are different grades for the post of fitter, welder and turner etc. Whereas in Abad Dairy the posts of fitters, welders and turners were without any classification with reference to grade and therefore the fitters, welders, and turners working in the Abad

Dairy can not claim parity with the pay-scales which were given to the holders of the identical posts in Gr.I., in AMTS.

3. I called upon Mr. K.M. Patel to show as to what was the difference in nature of the duties discharged by the fitters, welders and turners etc. in Abad Dairy and the nature of the duty discharged by the fitters, welders and turners in Gr.I in AMTS and Mr. Patel has submitted that since the dispute was raised by the employees it was for them to show that the nature of the duties discharged by the fitters, welders and turners in Abad Dairy were same or similar to those discharged by the holders of the identical posts in Gr. I in AMTS and that they have not shown any similarity in this case. In support of his submission Mr. Patel has placed reliance on the Supreme Court's decision reported in AIR 1991 SC 1173 in the case of Grih Kalyan Kendra Workers' Union Vs. Union of India and others, and AIR 1989 SC 19, in the case of State of U.P. and others and J. P.. Chaurasia and others. He has submitted that in such case the expert has to take decision and the Court should not interfere. On the other hand, Mr. Kosthi learned Advocate for the respondent has submitted that the Industrial Tribunal itself is an expert in this regard and the order has been passed after considering the fact that the holders of the posts of fitters, welders and turners in AMTS working in Gr.I are comparable with the fitters, welders and turners working in Abad Dairy and the same is obvious from contents of para 2 of the award itself. Mr. Koshti has placed reliance on Supreme Court's decision in the case of Randhir Singh Vs. Union of India reported in AIR 1982 SC 879.

4. I have considered the submissions made on behalf of both the sides. It is the settled law that while considering the questions of the pay-scales on the principle of equal pay for equal work the mathematical exactitude cannot be applied. What is to be seen is as to whether nature of the duties are comparable so as to invoke the principle of equal pay for equal work because unequal pay in case of equal work would amount to negation of rights conferred under Article 14 and 16 of the Constitution of India.

5. In Grih Kalyan Kendra Workers' Union case, after considering the observations made in the case of Federation of All India Customs and Central Excise Stenographers Vs. Union of India, reported in AIR 1988 SC 1291, the Supreme Court has taken the view that the concept of equality implies and requires equal treatment

for those who are situated equally. One cannot draw comparisons between unequals. If the facts of the given case fail to establish that persons who are aggrieved are not situated similarly with others, the benefits available to those others cannot *ispo facto* be given to the former though, of course, the question as to whether persons are situated equally cannot to be determined by the application of a formula with mathematical exactitude.

6. The Industrial Tribunal in the instant case has considered the aspects of equality and similarity and has held first three issues in the affirmative on the basis of the material placed before it and has passed an elaborate order and having given findings on three issues as above has granted the relief after considering the legal position and I find that the view taken by the Industrial Tribunal in the facts of the case on the findings arrived at by it warrants no interference by this Court in this writ of certiorari filed against the award which does not suffer from any error of fact or law. There is no case of lack of jurisdiction and no grievance with regard to breach of principle of natural justice. In the case of State of U.P. Vs. J.P. Chaurasia, AIR 1989 SC 19, relied on by Mr. Patel it has been held that two pay scales in same cadre of persons performing same or similar duties is permissible, but so far as the controversy in the present case is concerned, there was no grievance of this nature that they want higher pay scale in the same cadre of persons performing same or similar duties. The grievance raised by the employees of Abad Dairy was that they were working as fitters, welders and turners etc. without classification of any grade and the nature of duties performed by them were comparable with the holders of the identical posts in Gr.I in AMTS and therefore they were entitled to the pay scale at par. The posts in a given case may be equated or equivalent but once the question of equated or equivalent is considered by the Industrial Tribunal on the basis of the material placed before it and it has come to the conclusion that the holders of the posts of fitters, welders and turners in Abad Dairy were comparable with the posts of fitters, welders and turners in Gr.I in AMTS, it cannot be said that the view taken by the Industrial Tribunal in the facts of the present case, is perverse.

7. Hence, I do not find any infirmity in the impugned award passed by the Industrial Tribunal. All the contentions raised by Mr. K.M. Patel fail and in the result this Special Civil Application fails and the

same is accordingly dismissed. It is pointed out that the beneficiaries of this award have already retired from service and the arrears have been deposited by the petitioner Corporation in this Court. It is, therefore, ordered that the concerned workman i.e. beneficiary of the impugned award shall be entitled to withdraw the respective amounts. The amount deposited in this Court therefore shall be sent to the Industrial Tribunal and the amount due to each of the concerned workman shall be paid immediately to them out of the deposit transmitted as aforesaid.

8. Rule is hereby discharged. No order as to cost.

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